THE HON'BLE MR JUSTICE V.V.S.RAO

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WRIT PETITION No.26574 of 2005

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06.1.2006

Between:

Mir Riyasat Ali Khan, S/o.Late Mir Masoom Ali Khan

And others

... Petitioners

AND

The Secretary, Revenue Department,

Government of Andhra Pradesh, Hyderabad

And others

...Respondents

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION No.26574 of 2005

ORDER:

The nine petitioners are legal heirs of one Mir Masoom Ali Khan. He was owner and possessor of lands in survey Nos.120 (admeasuring Acs.19.05 gts.,), 117/3 (admeasuring Acs.2.02 gts.,) and 121 (admeasuring Acs.14.35 gts.,)situated at Saidabad Village. It is stated that he purchased these properties from late Mohammad Mujtaba Ali under registered sale deeds executed in 1994 vide document No.192/1353 Fasli dated 15.5.1944. Be that as it is, late Mir Masoom Ali Khan was an Excise contractor. Off and on an Excise contractor was required to give adequate surety/security for the excise amount payable to the government. While accepting the contract issued by the government some time in 1954, Mir Masoom Ali Khan hypothecated/mortgaged these properties to the government. He however did not discharge the total dues to the government and after his death, the petitioners (sons and daughters of Mir Masoom Ali Khan) paid a sum of Rs.1,12,000/- on

21.11.1997 towards excise arrears for the years 1954-1955 and 1955-1956 and obtained 'No Due Certificate' from the fourth respondent herein being R.C.No.B7/10968/1970 dated 07.2.2001.

After paying the entire excise arrears payable on behalf of their father Mir Masoom Ali Khan. On 13.5.2002, the petitioner submitted a representation to the third respondent to release the hypothecated/ mortgaged properties, in vain. They also submit that they approached the respondents 3 and 4 number of times without any response. Therefore, they filed the instant writ petition *inter alia* seeking a direction to the respondents to release the property given as security by the petitioners' father for obtaining arrack/toddy contracts.

On 13.12.2005, after hearing the learned Counsel for the petitioners, this Court directed the learned Assistant Government Pleader for Revenue (General) to get instructions in the matter. On 19.12.2005, it was brought to the notice of this Court that the District Collector's office is not keeping any of the documents, which were given as security by petitioners' father. Therefore, this Court directed the fourth respondent to be present in the Court with necessary record and also the hypothecated documents. On 20.12.2005, the Prohibition & Excise Superintendent, Secunderabad, who is in-charge of the fourth respondent appeared and requested a week's time to verify from the record whether the hypothecated/mortgaged documents submitted by the petitioners' father are available in the records or not. On all these occasions, the learned Government Pleader for Excise was absent. However, on 27.12.2005, the learned Assistant Government Pleader for Excise submitted that the documents given by the petitioners' father are traced in the files and she sought a week's time for filing counter. Accordingly, a detailed counter affidavit was filed on 05.1.2006.

In the lengthy counter affidavit filed by the fourth respondent, the averment of the petitioners that the entire excise arrears have been cleared off is admitted. It is also admitted that Mir Masoom Ali Khan obtained contract of Sendhi Group Ghafsingapur for 1365 Fasli and fell in arrears. It is also admitted that he pledged the documents like Pahani Patrikas and sale documents by producing necessary solvency certificate. However, it is alleged that the petitioner produced false and forged solvency certificate in respect of the properties, which are not owned by him. That is the reason why, the documents were not returned to the petitioners even after payment of the excise arrears by them. It is also alleged that the properties are owned by Giajraj Singh and that when the properties were proposed to be auctioned for realizing the excise arrears, Sheikh Dada and Bikku Mian filed objections claiming the property. In a sense, the allegations of the counter affidavit are to the effect that the documents cannot be released to the petitioners, as Mir Masoom Ali Khan was not the owner of the lands.

The learned Counsel for the petitioner reiterated the submissions and contentions as disclosed in the affidavit accompanying the writ petition. **Per contra,** the learned Assistant Government Pleader for Excise vehemently contends that when the petitioners' father or petitioners are not the title holders in respect of the lands in survey Nos.120, 117/3 and 121 (corresponding to new survey Nos.111,

116, 118 and 165), the petitioners have no right to file writ petition seeking directions to the respondents for release of the documents.

After hearing the learned Counsel for the petitioners and learned Government Pleader for Excise, and after giving anxious considerations to the controversy, this Court is rather curious as to how the Government could have raised objections after lapse of 50 years regarding title of the petitioners. Admittedly, the petitioners' father Mir Masoom Ali Khan was abkari contractor for more than 20–25 years before his death. Whenever he obtained contract from the excise authorities, he used to give the properties in survey Nos.120, 117/3 and 121 as security. The government accepted the same and allowed him to carry on the excise business duly raising the demand for payment of excise arrears. At no point of time, the title of the Mir Masoom Ali Khan was objected to nor the government was vigilant to get the title of the excise contractor verified. Be that as it is, the relationship between Mir Masoom Ali Khan as excise contractor and the government is that the mortgagor and mortgagee or guarantor and debtor. The mortgagee having accepted the mortgage cannot be allowed in common law of equity to turn around and deny the title of the mortgagor based on which the mortgagee altered his position and got benefit out of that. In this case, admittedly, the petitioners herein who are legal heirs of Mir Masoom Ali Khan cleared off the excise arrears and obtained 'No objection certificate' from the Office of the Prohibition & Excise Superintendent vide RC No.B7/10968/76 dated 07.2.2001. In this background, it would be improper and arbitrary for the respondents to deny the title of the petitioners. If there is any objection from any quarter, the government could have been well advised to inform those third parties to resolve the title dispute in a civil court. The government cannot decide the title and on that ground deny the release of various documents relating to properties hypothecated/mortgaged by Mir Masoom Ali Khan.

The writ petition, for the above reasons, is allowed with exemplary costs quantified at Rs.10,000/- (Rupees ten thousand only).

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(**V.V.S.RAO, J**)

January 06, 2006.

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